

From: "Skelly, Christopher (SEC)"
Date: Jul 11, 2016 10:55:52 AM
Subject: RE: Chapter 40B Projects in Acton
To: "'abklauer@verizon.net'" <abklauer@verizon.net>

William,

Here is a response I send out on Chapter 40C and Chapter 40B.

A Supreme Judicial Court case on Cape Cod clearly clarified whether affordable housing comprehensive permits created under Massachusetts General Law Chapter 40B are exempt from local historic district commission regulatory review. Passed in 1969, MGL Chapter 40B was enacted in order to expand the amount of low and moderate income housing in Massachusetts by limiting local regulations which are barriers to the construction of such housing. Under a comprehensive permit, an applicant seeking to construct a residential development that includes low and moderate income housing submits their application and plans to the zoning board of appeals. The zoning board of appeals then seeks the input of other local boards. Under a comprehensive permit, the "local boards" no longer have individual approval authority. They are advisory to the zoning board of appeals.

It has been asked whether a local historic district commission is considered a "local board" and therefore loses its ability to regulate exterior architectural features when a proposed project is part of a comprehensive permit. Chapter 40B defines a local board as "any town or city board of survey, board of health, board of subdivision control appeals, planning board, building inspector or the officer or board having supervision of the construction of buildings or the power of enforcing municipal building laws, or city council or board of selectmen." In a Chapter 40B project proposed by the Dennis Housing Corporation as the developer, the Dennis Old Kings Highway Historic District Committee took the position that they were not a local board as defined by Chapter 40B and that the applicant/developer would need to obtain a certificate of appropriateness in order to build.

The Supreme Judicial Court found that the Dennis Old Kings Highway Historic District Committee is a local board. According to the court, the HDC is administered at the local level, is appointed by the Board of Selectmen and was created through town approval. In addition, the Court found that even though a historic district commission is not named in the Chapter 40B legislation, it still fits within the definition of what constitutes a local board. <http://masscases.com/cases/sjc/439/439mass71.html>

Local Historical Commissions and Historic District Commissions concerned about the impact of a Chapter 40B project on significant historic resources should always participate fully in the official process by voicing their concerns to the Zoning Board of Appeals. Additionally, if your zoning board of appeals does not have written rules and regulations on comprehensive permit applications, encourage the preparation of these guidelines and the inclusion of historic resource identification and consideration.

Christopher C. Skelly

Director of Local Government Programs

Massachusetts Historical Commission

Christopher.Skelly@state.ma.us

From: Bell, Ed @ SEC
Sent: Monday, July 11, 2016 8:55 AM
To: Skelly, Christopher @ SEC
Cc: Steinitz, Michael @ SEC
Subject: FW: Chapter 40B Projects in Acton

Will one of you please respond that they should comment to the ZBA? Thank you, Ed

From: Amber or Bill [<mailto:abklauer@verizon.net>]
Sent: Friday, July 08, 2016 11:15 AM
To: SEC-DL-MHCWEB
Subject: Chapter 40B Projects in Acton

Acton has a number of so-called 40B projects and several have structures that are on our Cultural Resource List and the MHC Listing. Does the application for a 40B project have something that requires the applicant to recognize the property as containing items of historic value and if so, what jurisdiction does the Acton Historical Commission or the Acton Historic District Commission have over the process.

Thanks for your assistance,

William Klauer

Chair, AHC